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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,737	03/14/2005	Christine Jeanmaire	C 2721 PCT/US	8817
23657	7590	06/15/2007		
COGNIS CORPORATION PATENT DEPARTMENT 300 BROOKSIDE AVENUE AMBLER, PA 19002			EXAMINER CHEN, CATHERYNE	
			ART UNIT	PAPER NUMBER
			1655	
			MAIL DATE	DELIVERY MODE
			06/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,737

Applicant(s)

JEANMAIRE ET AL.

Examiner

Catheryne Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) 12-24, 29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-28 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>March 14, 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Currently, Claims 12-31 are pending. Claims 25-28, 31 are examined on the merits. Claims 1-11 are canceled.

Election/Restrictions

Claims 12-24, 29-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 8, 2007.

Applicant's election with traverse of plectin/HD1, Hibiscus esculentus, ammonium glycyrrhizate in the reply filed on May 8, 2007 is acknowledged. The traversal is on the ground(s) that there are special technical features. This is not found persuasive because all of the species can be consumed together.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 25-26, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al. (US 5877212) and Leivo (Brit. J. Dermat., 200, vol. 142, pages 991-1002).

Yu et al. teaches topical composition for cosmetic and dermatologic purposes (column 1, lines 6, 10) of ascorbic acid, which comes from citrus fruits, (column 4, line 7), sunscreen agents (column 11, line 35), vitamin E (column 11, line 52), ammonium glycyrrhizate (column 12, lines 60-61). However it does not teach plectin/HD1.

Leivo teaches cytoplasmic protein plectin, HD1 are localized at the inner hemidesmosomal plaque and are involved in the linkage of keratin cytoskeleton to the hemidesmosome. Plectin/HD1 is better expressed at the leading edge in blisters than in open wounds (page 1000, second paragraph).

Because plectin/HD1 proteins in the cytoplasm are recruited to blisters on skin, the use of plectin/HD1 as a composition for skin will be helpful. Thus, an artisan of ordinary skill would reasonably expect that a protein useful for wound healing could be used as the skin composition taught by the references. This reasonable expectation of success would motivate the artisan to use plectin/HD1 in the reference composition. Thus, using plectin/HD1 is considered an obvious modification of the references.

The references also do not specifically teach combining plectin, UV protection factors, antioxidants, and ammonium glycyrrhizate together. The references do teach that the ingredients are for involved in skin (see discussion above). As discussed in MPEP 2144.06:

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It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

Thus, it would be obvious to combine plectin, UV protection factors, antioxidants, with ammonium glycyrrhizate because they are taught in the reference to have the same purpose.

Claims 25-28, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al. (US 5877212) and Leivo (Brit. J. Dermat., 200, vol. 142, pages 991-1002) as applied to claims 25-26, 28 above, and further in view of Gilles (US 6379719 B1).

Yu et al. teaches topical composition for cosmetic and dermatologic purposes (column 1, lines 6, 10) of ascorbic acid, which comes from citrus fruits, (column 4, line 7), sunscreen agents (column 11, line 35), vitamin E (column 11, line 52), ammonium glycyrrhizate (column 12, lines 60-61). However it does not teach plectin/HD1 and Hibiscus esculentus.

Leivo teaches cytoplasmic protein plectin, HD1 are localized at the inner hemidesmosomal plaque and are involved in the linkage of keratin cytoskeleton to the hemidesmosome. Plectin/HD1 is better expressed at the leading edge in blisters than in open wounds (page 1000, second paragraph).

Gilles teaches extracts of Hibiscus esculentus seeds (okra) in cosmetics (column 2, line 60-62).

Because plectin/HD1 proteins in the cytoplasm are recruited to blisters on skin, the use of plectin/HD1 as a composition for skin will be helpful. Thus, an artisan of ordinary skill would reasonably expect that a protein useful for wound healing could be used as the skin composition taught by the references. This reasonable expectation of success would motivate the artisan to use plectin/HD1 in the reference composition. Thus, using plectin/HD1 is considered an obvious modification of the references.

The references also do not specifically teach combining plectin, UV protection factors, antioxidants, ammonium glycyrrhizate, and okra together. The reference does teach that the ingredients are involved in skin (see discussion above). As discussed in MPEP 2144.06:

It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

Thus, it would be obvious to combine plectin, UV protection factors, antioxidants, with ammonium glycyrrhizate and okra because they are taught in the reference to have the same purpose.

Claims 25-28, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu et al. (US 5877212) and Leivo (Brit. J. Dermat., 200, vol. 142, pages 991-1002) as applied to claims 25-26, 28 above, and further in view of Ichimaru (JP 59093010 A).

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Yu et al. teaches topical composition for cosmetic and dermatologic purposes (column 1, lines 6, 10) of ascorbic acid, which comes from citrus fruits, (column 4, line 7), sunscreen agents (column 11, line 35), vitamin E (column 11, line 52), ammonium glycyrrhizate (column 12, lines 60-61). However it does not teach plectin/HD1 and Hibiscus esculentus.

Leivo teaches cytoplasmic protein plectin, HD1 are localized at the inner hemidesmosomal plaque and are involved in the linkage of keratin cytoskeleton to the hemidesmosome. Plectin/HD1 is better expressed at the leading edge in blisters than in open wounds (page 1000, second paragraph).

Ichimaru teaches extracts of Hibiscus esculents in cosmetics (Abstract).

Because plectin/HD1 proteins in the cytoplasm are recruited to blisters on skin, the use of plectin/HD1 as a composition for skin will be helpful. Thus, an artisan of ordinary skill would reasonably expect that a protein useful for wound healing could be used as the skin composition taught by the references. This reasonable expectation of success would motivate the artisan to use plectin/HD1 in the reference composition. Thus, using plectin/HD1 is considered an obvious modification of the references.

The references also do not specifically teach combining plectin, UV protection factors, antioxidants, ammonium glycyrrhizate, and okra together. The reference does teach that the ingredients are involved in skin (see discussion above). As discussed in MPEP 2144.06:

It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose; in order to form a third composition to be

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used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.

Thus, it would be obvious to combine plectin, UV protection factors, antioxidants, with ammonium glycyrrhizate and okra because they are taught in the reference to have the same purpose.

Conclusion

No claim is allowed.

Contact Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Patent Examiner
Art Unit 1655


SUSAN COE HOFFMAN
PRIMARY EXAMINER